

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALBERTO RESTO,

Plaintiff,

-against-

9:08-CV-0340
(LEK/GHL)

WEISSMANE, Doctor, Upstate C.F.;
N. SMITH, Nurse Administrator, Upstate
C.F., CHESSBOARD, Registered Nurse,
Upstate C.F., WALSH, Registered
Nurse, Upstate C.F.,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on June 2, 2008 by the Honorable George H. Lowe, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. Report-Rec. (Dkt. No. 6). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Plaintiff Alberto Resto, which were filed on June 17, 2008. Objections (Dkt. No. 8).¹

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or

¹ The filing received from Plaintiff includes a completed Inmate Authorization form, and several hand-written pages which primarily state the general legal assertion that an Eighth Amendment claim for deliberate indifference contains objective and subjective components and list what appear to be instructions Plaintiff received regarding filling out the necessary forms for proceeding *in forma pauperis*. The Court has liberally construed this filing as Plaintiff’s Objections to the Report-Recommendation.

recommendations made by the magistrate judge.” Id. This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 6) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

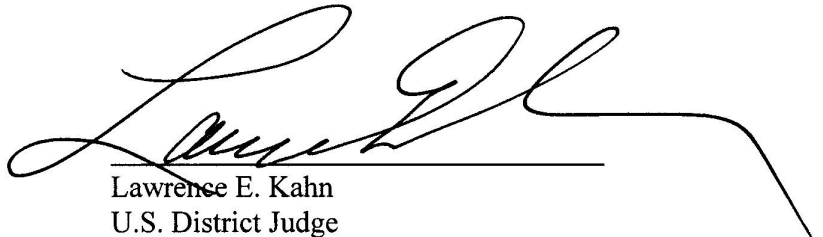
ORDERED, that Plaintiff’s Motion to proceed *in forma pauperis* (Dkt. No. 2) is **DENIED without prejudice**; and it is further

ORDERED, that Plaintiff’s Complaint (Dkt. No. 1) will be **DISMISSED** without further action of this Court if Plaintiff does not, within **THIRTY (30) DAYS** of the date of this Order, both: (1) Either (a) pay the Court’s filing fee of three hundred fifty dollars (\$350) or (b) file a completed motion for leave to proceed *in forma pauperis*; **AND** (2) File an Amended Complaint that complies with Fed. R. Civ. P. 8(a)(2), 10(b), and 12(b)(6); and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: August 25, 2008
Albany, New York


Lawrence E. Kahn
U.S. District Judge